

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

ALFRED MILTON EVANS, ET AL.,	)	
	)	
Plaintiffs,	)	
vs.	)	NO. CIV-01-0252-HE
	)	(Consolidated Number)
MIKE FOGARTY, ET AL.,	)	
	)	
Defendants.	)	

**ORDER**

The plaintiffs and the Oklahoma Foundation for Medical Quality, Inc. (“OFMQ”) have filed motions seeking attorney’s fees. The plaintiffs’ fee request is set for hearing on **Tuesday, June 28, 2005 at 10:00 a.m.** Counsel for the parties are directed to confer prior to the hearing regarding the various issues raised in the defendants’ responses to the fee application in an effort to resolve any issues as to which agreement can be reached and/or to narrow the issues remaining for resolution.

OFMQ’s motion for attorney’s fees [Doc. #472] is **DENIED**. “While a prevailing plaintiff ordinarily is entitled to attorney fees, a prevailing defendant in a civil rights action may recover attorney fees only if the suit was vexatious, frivolous, or brought to harass or embarrass the defendant. This is a difficult standard to meet, to the point that rarely will a case be sufficiently frivolous to justify imposing attorney fees on the plaintiff.” Mitchell v. City of Moore, Oklahoma, 218 F.3d 1190, 1203 (10th Cir. 2000) (internal citations and quotations omitted). Applying this standard, the court concludes an award of attorney’s fees

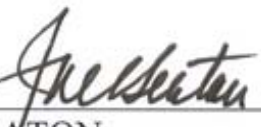
to OFMQ is not warranted.<sup>1</sup>

Finally, defendants Mike Fogarty and Dana Brown have filed motions requesting an order staying execution on the judgment entered in this action pending appeal without bond or, alternatively, setting the amount of a supersedeas bond. While the court concludes the defendants have not demonstrated that the bond requirement should be waived, it concludes a stay of execution is appropriate pending a decision on the pending motions for attorney's fees so that a single bond determination may be made and an appropriate order entered.

Accordingly, defendants Fogarty and Brown's motions [Doc. Nos. 492 and 493] are **GRANTED IN PART** and **DENIED IN PART**. A temporary stay of execution without bond is granted pending the entry of judgment as to attorney's fees. At that time, the court will resolve all remaining issues as to the amount of the supersedeas bond.

**IT IS SO ORDERED.**

Dated this 2<sup>nd</sup> day of June, 2005.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> *In both its motion and reply brief OFMQ states that it spent substantial time “researching and briefing the complex legal issues in the two motions to dismiss,” reply brief, p. 5 n.3; motion, p. 5, undermining its assertion that an award of fees is appropriate under 42 U.S.C. § 1988.*